

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: §
§ Case No. 09-34784-SGJ-7
ONDOVA LIMITED COMPANY, § Chapter 7
§
Debtor. §

MOTION TO AUTHORIZE TRUSTEE TO TRANSFER PROPERTY

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AT 110 COMMERCE ST., RM. 1254, DALLAS, TX 75242-1496 BEFORE CLOSE OF BUSINESS ON MAY 15, 2020, WHICH IS AT LEAST 21 DAYS FROM THE DATE OF SERVICE HEREOF.

ANY RESPONSE SHALL BE IN WRITING AND FILED WITH THE CLERK, AND A COPY SHALL BE SERVED UPON COUNSEL FOR THE MOVING PARTY PRIOR TO THE DATE AND TIME SET FORTH HEREIN. IF A RESPONSE IS FILED A HEARING MAY BE HELD WITH NOTICE ONLY TO THE OBJECTING PARTY.

IF NO HEARING ON SUCH NOTICE OR MOTION IS TIMELY REQUESTED, THE RELIEF REQUESTED SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT OR THE NOTICED ACTION MAY BE TAKEN.

TO THE HONORABLE STACEY G. JERNIGAN,
UNITED STATES BANKRUPCY JUDGE:

Spamhaus Project, Ltd. (“Spamhaus”), as a party-in-interest of the above-captioned case, hereby files this Motion to Authorize Trustee to Transfer Property (the “Motion”). In support of the Motion, Spamhaus would respectfully show as follows:

I.

JURISDICTION

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334.

This is a core proceeding.

II.

FACTS

2. Ondova Limited Company ("Ondova" or the "Debtor") filed a Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code on July 27, 2009.

3. On September 17, 2009, this Court approved the appointment of Daniel J. Sherman as Chapter 11 Trustee. On February 16, 2016, the case converted to Chapter 7 and Mr. Sherman was appointed as the Chapter 7 Trustee ("Trustee") of the Debtor's bankruptcy estate.

4. On September 18, 2014 the World Organization Arbitration and Mediation Center ("WIPO") issued a decision ordering Ondova to transfer the Domain Name Spamhaus.com (the "Domain Name") to Spamhaus.

5. Under the Uniform Domain Name Dispute Resolution Policy 4(k)¹, the respondent in a WIPO action has ten business days after a decision is issued to notify the WIPO Panel that a lawsuit was commenced by respondent, at which time the WIPO Panel will not implement its decision.

6. According to the WIPO Decision, for the past decade, the website accessed through the Domain Name has shown either a generic parking page or an offer to sell the Domain Name. *See* Ex. A at § 4.

¹ <https://www.icann.org/resources/pages/policy-2012-02-25-en#4a>

7. According to the WHOIS data² for the Domain Name, attached as Exhibit B, Ondova is currently the listed registrant of the Domain Name.

8. In his decision, the WIPO panelist found that Ondova lacked any rights or legitimate interests in the Domain Name and it was registered and used in bad faith by Ondova to take advantage of the association with Spamhaus's website spamhaus.org. WIPO decided that Ondova acted in bad faith because Spamhaus has held the European trademark on the word Spamhaus since 1999 and has used the domain spamhaus.org since 1999. *See* Ex. A at § 6(c).

III.

ARGUMENT

9. Spamhaus seeks, and is entitled to, the Court granting authorization for the Trustee to take whatever measures are necessary to transfer the Domain Name from Ondova to Spamhaus.

10. Here, cause clearly exists to transfer the Domain Name, based upon the Debtor's lack of good faith as determined in the WIPO decision, because cyber-squatting on a domain name that uses the prior-registered trademark of another entity is indicative of bad faith.³ The irreparable prejudice and harm that will be suffered by the Spamhaus absent the granting of the relief requested herein, and also based upon equitable considerations.

11. Secondly, if this Court does not permit compliance with the WIPO Decision by authorizing the Trustee to transfer the Domain Name to Spamhaus, Spamhaus will continue to be severely prejudiced and suffer significant and irreparable harm. Domain names with the .com

² WHOIS data is identifying and contact information provided by website owners to registrars accredited by the Internet Corporation for Assigned Names and Numbers, which is commonly referred to as ICANN. *See* <https://whois.icann.org/en/about-whois>

³ *See* Ex. A at § 6(c).

extension have become synonymous with the internet. Nearly half of all registered domain names are .com domains.⁴ Because of their ubiquity, it is also easier for owners of .com domains to brand, promote, or grow their website. Therefore, if a competitor obtained the Domain Name from the Trustee, Spamhaus, with its .org domain extension, could lose all the goodwill and recognition that it has built up over the years in its brand and trademark causing significant and irreparable harm.

12. Notwithstanding, cause also exists independently of any determination of the Debtor's bad faith on equitable grounds because the Domain Name belongs to Spamhaus since WIPO has already ordered the Domain Name to be transferred to Spamhaus.⁵ Furthermore, no other party could receive the Domain Name because any internet domain name registrar would be bound by the WIPO Decision.⁶

13. Accordingly, Spamhaus respectfully request that the Court grant the Trustee authorization to take any necessary actions to transfer the Domain Name to Spamhaus's control.

IV.

REQUEST FOR RELIEF

BASED UPON THE FOREGOING, Spamhaus respectfully requests that this Court enter an order (i) authorizing the Trustee to take any necessary actions to transfer the Domain Name to Spamhaus's control; and (ii) granting Spamhaus such other and further relief to which it is justly entitled.

⁴ <https://www.statista.com/statistics/265677/number-of-internet-top-level-domains-worldwide/>

⁵ See Ex. A at § 7.

⁶ See *id.*

Dated: April 22, 2020

Respectfully submitted,

/s/ R. Adam Swick

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CERTIFICATE OF CONFERENCE

I hereby certify that I communicated with Daniel J. Sherman regarding the Motion and the Trustee the does not oppose the relief requested.

/s/ R. Adam Swick

R. Adam Swick

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **MOTION TO AUTHORIZE TRUSTEE TO TRANSFER PROPERTY** was sent either electronically by the clerk of court on April 22, 2020 or via first class United States mail, postage prepaid to each of the below-listed parties and to the parties included on the attached Label Matrix on April 22, 2020.

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Case 09-34784-sqj7

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Addresses marked (c) above for the following entity/entities were corrected
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